

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2019

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THE HONOURABLE MR. JUSTICE M.S. RAMESH

Crl.O.P.No.27862 of 2019

and

Crl.M.P No.15408 of 2019

A.Sennimalaigounder

...Petitioner/Defacto Complainant

Vs

1. State by

Inspector of Police
District Crime Branch,
Erode District.

2. E.S.Selambanan

...Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C, praying to direct the Judicial Magistrate No.III, Erode i.e the Commissioner appointed in C.M.P No.247 of 2019 in C.C No.94 of 2019 on the file of the Chief Judicial Magistrate, Salem for recording the evidence of the petitioner under Section 286 of Criminal Procedure Code, to record the evidence of the petitioner at his present residence at Aathikkadu, Attayampalayam, Erode Taluk.

For Petitioner : Mr.D.Selvaraj for
M/s.C.S.Saravanan

For Respondents: Mr.C.Iyyapparaj for R1
Additional Public Prosecutor
M/s.K.Priya for R2

सत्यमेव जयते
O R D E R

This Criminal Original Petition is filed seeking for a direction to the Judicial Magistrate No.III, Erode i.e the Commissioner appointed in C.M.P No.247 of 2019 in C.C No.94 of 2019 on the file of the Chief Judicial Magistrate, Salem for recording the evidence of the petitioner under Section 286 of Criminal Procedure Code, at his present residence at Aathikkadu, Attayampalayam, Erode Taluk.

2. By an earlier order, dated 27.04.2019 passed in C.M.P No.247 of 2019 in C.C No.94 of 2019 , the learned Chief Judicial Magistrate, Salem had taken into account, the age and medical condition of the petitioner and directed that the evidence of the de-facto complainant can be recorded by the jurisdictional Magistrate. Thereafter, on 10.10.2019, a memo was filed before the learned Judicial Magistrate No.III, Erode stating that the complainant is not in a position to appear personally before the jurisdictional Magistrate who was appointed as Commissioner by the concerned Court and therefore, sought for examination at his residence. However, for the non-appearance of the petitioner before the Judicial Magistrate No.III, Erode, a warrant has been issued to secure his presence. With this background, the present Criminal Original Petition is filed.

3.It is not in dispute that the petitioner herein, is aged about 94 years. Though the learned Chief Judicial Magistrate had earlier extended leniency by appointing a Commissioner to examine him as a witness, he has still expressed his inability to appear owing to his age and medical condition. This Court, by considering the age of the petitioner who is claimed to be 94 years now and also that he could undergoing certain medical ailments, is inclined to take leniency on the humanitarian ground and permit him to be examined at his residence. In view of Section 287 of Cr.P.C which enables the accused to also cross examine the witness, no prejudice would be caused to them.

4. In the light of the above observations, there shall be a direction to the learned Judicial Magistrate No.III, Erode to have the petitioner/de-facto complainant examined at his present address viz., Aathikkadu, Aattayampalaym, (near Nasianur), Erode Taluk, in the presence of the counsel for the accused also and further, permit the counsel for the accused to cross examine the de-facto complainant. In the light of the age of the petitioner, the learned Judicial Magistrate No.III, Erode, shall ensure that such an examination of cross examination /re-examination shall be completed preferably on the same day, which procedure shall be commenced atleast within a period of one week from the date of receipt of a copy of this order.

5. This Criminal Original Petition stands disposed of accordingly. Consequently, the connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Inspector of Police
District Crime Branch,
Erode District.

2. The Public Prosecutor
High Court of Madras.

3.The Judicial Magistrate III
Erode

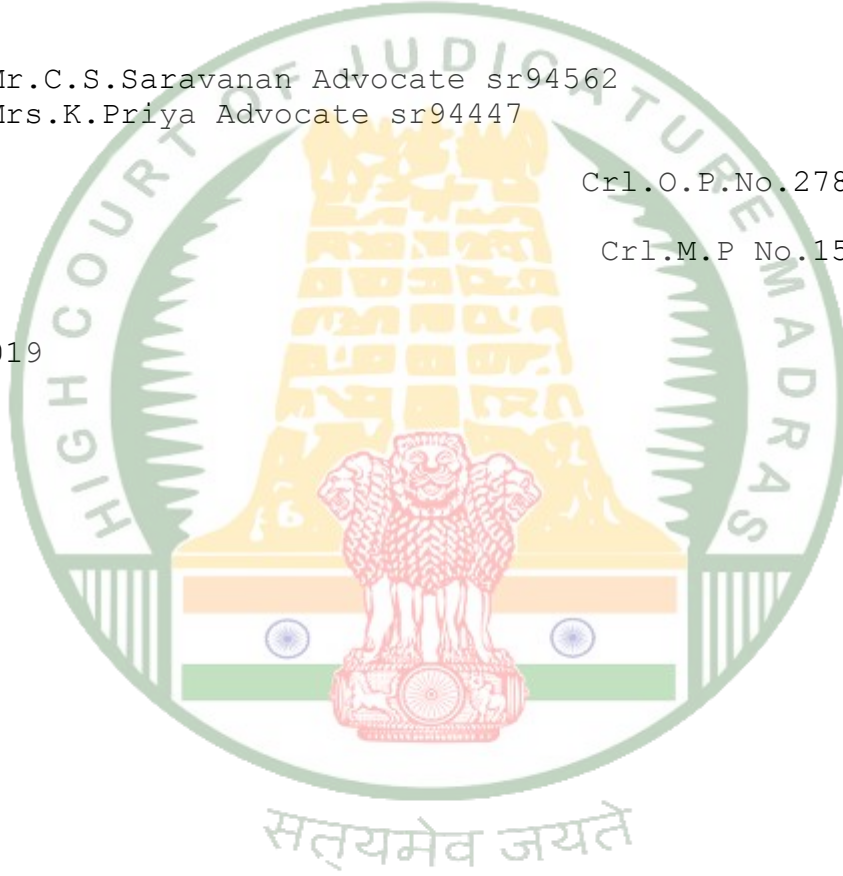
4.The Chief Judicial Magistrate
Salem

+1 cc to Mr.C.S.Saravanan Advocate sr94562

+1 cc to Mrs.K.Priya Advocate sr94447

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